

LAW OFFICES OF POLACHEK & ASSOCIATES, P.C.

BY: RICHARD A. POLACHEK, ESQUIRE ATTORNEY FOR: DEFENDANT, KUHARCHIK CONSTRUCTION, INC.
IDENTIFICATION NO. 35283
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICKI E. OLSEN,	:	NO. 03-1609
PLAINTIFF	:	
V.	:	
COMMONWEALTH OF PENNSYLVANIA DEPT. OF	:	CIVIL ACTION - LAW
TRANSPORTATION; TOWNSHIP OF HANOVER; MT.	:	
HOPE ROCK PRODUCTS, INC.; TILCON NEW YORK,	:	
INC.; INTERCOUNTY PAVING ASSOCIATES, LLC	:	JURY TRIAL DEMANDED
ROCK HILL TRUCKING CO., INC.; MARK NEHODA	:	
:	:	
INDIVIDUALLY AND T/A M.D.N. TRUCKING	:	
COMPANY; EAGLE TRAFFIC CONTROL, INC.;	:	
AMITY FENCE COMPANY; INTERSTATE ROAD	:	
MARKING CORP. & ITS SUCCESSOR IN INTEREST,	:	
:	:	
INTERSTATE ROAD MANAGEMENT CORPORATION;	:	
:	:	
MIDLANTIC ENGINEERING, INC.; KUHARCHIK	:	
:	:	
CONSTRUCTION, INC.; MARBELL, INC.; TOTAL	:	
:	:	
LANDSCAPING, INC.; JAMES D. SMITH :	:	
INDIVIDUALLY AND T/A J.D. SMITH TREE SERVICE;	:	
:	:	
UNITED RENTALS HIGHWAY TECHNOLOGIES, INC.;	:	
:	:	
AND ABC CORPORATION,	:	
DEFENDANTS	:	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT, KUHARCHIK
CONSTRUCTION, INC., TO THE COMPLAINT OF PLAINTIFF, VICKI E. OLSEN**

AND NOW COMES Defendant, KUHARCHIK CONSTRUCTION, INC., by and through its counsel, Polachek & Associates, P.C., by Richard A. Polachek, Esquire, and Answers the Complaint of Plaintiff, VICKI E. OLSEN, as follows:

1. It is averred that after reasonable investigation Defendant, KUHARCHIK CONSTRUCTION, INC., is without knowledge or information sufficient to form a belief as to the truth or falsity of the following Paragraphs contained in Plaintiff's Complaint and said Paragraphs are therefore hereby denied and strict proof thereof is demanded at the time of Trial: ¶ 1, ¶ 2, ¶ 3, ¶ 4, ¶ 5, ¶ 6, ¶ 7, ¶ 8, ¶ 9, ¶ 10, ¶ 11, ¶ 12, ¶ 14, ¶ 15, ¶ 16, ¶ 17, ¶ 18, ¶ 21, ¶ 22, ¶ 23, ¶ 24, ¶ 25, ¶ 26 and ¶ 27.

2. Defendant, KUHARCHIK CONSTRUCTION, INC., denies the averments set forth in the following Paragraphs contained in Plaintiff's Complaint: ¶ 19, ¶ 20, ¶ 28, ¶ 29, ¶ 30, ¶ 31, ¶ 32, ¶ 33, ¶ 34, ¶ 35(a)-(p), ¶ 36, ¶ 37, ¶ 38, ¶ 39, ¶ 40, ¶ 41, ¶ 42, ¶ 43, ¶ 44, ¶ 102, ¶ 103, ¶ 104, ¶ 131, ¶ 132, ¶ 133, ¶ 134, ¶ 135, ¶ 136, ¶ 137 and ¶ 139.

3. Defendant, KUHARCHIK CONSTRUCTION, INC., admits the averments set forth in the following Paragraphs contained in Plaintiff's Complaint: ¶ 13.

4. In answering Paragraph 45 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 44, inclusive, as if the same were set forth fully here at length.

5. In answering Paragraphs 46 through 50, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

6. In answering Paragraph 51 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 50, inclusive, as if the same were set forth fully here at length.

7. In answering Paragraphs 52 through 57, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

8. In answering Paragraph 58 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 57, inclusive, as if the same were set forth fully here at length.

9. In answering Paragraphs 59 through 63, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

10. In answering Paragraph 64 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 63, inclusive, as if the same were set forth fully here at length.

11. In answering Paragraphs 65 through 70, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

12. In answering Paragraph 71 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 70, inclusive, as if the same were set forth fully here at length.

13. In answering Paragraphs 72 through 76, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

14. In answering Paragraph 77 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 76, inclusive, as if the same were set forth fully here at length.

15. In answering Paragraphs 78 through 80, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

16. In answering Paragraph 81 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 80, inclusive, as if the same were set forth fully here at length.

17. In answering Paragraphs 82 through 84, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

18. In answering Paragraph 85 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 84, inclusive, as if the same were set forth fully here at length.

19. In answering Paragraphs 86 through 88, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

20. In answering Paragraph 89 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 88, inclusive, as if the same were set forth fully here at length.

21. In answering Paragraphs 90 through 92, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

22. In answering Paragraph 93 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 92, inclusive, as if the same were set forth fully here at length.

23. In answering Paragraphs 94 through 96, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

24. In answering Paragraph 97 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 96, inclusive, as if the same were set forth fully here at length.

25. In answering Paragraphs 98 through 100, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

26. In answering Paragraph 101 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 100, inclusive, as if the same were set forth fully here at length.

27. In answering Paragraph 105 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 104, inclusive, as if the same were set forth fully here at length.

28. In answering Paragraphs 106 through 108, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

29. In answering Paragraph 109 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 108, inclusive, as if the same were set forth fully here at length.

30. In answering Paragraphs 110 through 112, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

31. In answering Paragraph 113 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 112, inclusive, as if the same were set forth fully here at length.

32. In answering Paragraphs 114 through 116, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

33. In answering Paragraph 117 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 116, inclusive, as if the same were set forth fully here at length.

34. In answering Paragraphs 118 through 120, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

35. In answering Paragraph 121 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 120, inclusive, as if the same were set forth fully here at length.

36. In answering Paragraphs 122 through 129, inclusive, of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that no Answer is deemed required since the allegations contained in said Paragraphs refer to another Defendant in this action. Said allegations are otherwise denied.

37. In answering Paragraph 130 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 129, inclusive, as if the same were set forth fully here at length.

38. In answering Paragraph 138 of Plaintiff's Complaint, Defendant, KUHARCHIK CONSTRUCTION, INC., incorporates herein by reference its Answers to Paragraphs 1 through 137, inclusive, as if the same were set forth fully here at length.

WHEREFORE, Defendant, KUHARCHIK CONSTRUCTION, INC., demands judgment in its favor on the cause or causes of action alleged.

FIRST AFFIRMATIVE DEFENSE

The Court may lack jurisdiction of the subject matter of this action.

SECOND AFFIRMATIVE DEFENSE

The Complaint filed in this matter fails to state a cause of action against Defendant, KUHARCHIK CONSTRUCTION, INC., upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The claims set forth by Plaintiff, VICKI E. OLSEN, are or may be barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Defendant, KUHARCHIK CONSTRUCTION, INC., asserts the defense of contributory negligence and/or comparative negligence and state that the Plaintiff's claims are thereby barred.

FIFTH AFFIRMATIVE DEFENSE

Defendant, KUHARCHIK CONSTRUCTION, INC., asserts the defense of assumption of the risk.

SIXTH AFFIRMATIVE DEFENSE

Any injuries and/or damages alleged to have been sustained by Plaintiff, VICKI E. OLSEN, were caused solely by acts of others over whom Third Party Defendants had no control or right of control.

SEVENTH AFFIRMATIVE DEFENSE

Any injuries and/or damages alleged to have been sustained by Plaintiff, VICKI E. OLSEN, were caused solely by acts and/or omissions of persons or entities other than Defendant, KUHARCHIK CONSTRUCTION, INC., and for whose actions and/or omissions Defendant, KUHARCHIK CONSTRUCTION, INC., were not responsible.

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiff, VICKI E. OLSEN, sustained injuries and/or damages as alleged, then any such injuries and/or damages were caused by the negligence of others and the negligence of others constitutes an intervening and superseding cause of any such injuries or damages allegedly suffered.

NINTH AFFIRMATIVE DEFENSE

If Plaintiff, VICKI E. OLSEN, suffered any injuries and/or damages as alleged, then any such alleged injuries and/or damages were caused by the combined negligence, contributory negligence or assumption of the risk on the part of Plaintiff, VICKI E. OLSEN, and/or other parties over whom Defendant, KUHARCHIK CONSTRUCTION, INC., had no control, right of control or supervision.

TENTH AFFIRMATIVE DEFENSE

Defendant, KUHARCHIK CONSTRUCTION, INC., denies and all negligence, recklessness and/or any other tortious or wrongful conduct whatsoever.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's right of recovery is barred and/or limited by the Pennsylvania Financial Responsibility Act, the terms and offsets of which are incorporated herein by reference as if the same were set forth fully here at length.

TWELFTH AFFIRMATIVE DEFENSE

No conduct or failure to act on the part of Defendant, KUHARCHIK CONSTRUCTION, INC., constituted a legal cause or substantial factor of the motor vehicle accident in question.

THIRTEENTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the parties to this action, in particular, Defendant, KUHARCHIK CONSTRUCTION, INC..

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's right of recovery is barred and/or limited by a North Carolina law regarding motor vehicles and North Carolina Financial Liability Act, the terms and offsets of such regulations and/or Act are incorporated herein by reference as if the same were set forth fully here at length.

WHEREFORE, Defendant, KUHARCHIK CONSTRUCTION, INC., demands judgment in its favor on the cause or causes of action alleged.

CROSSCLAIM PURSUANT TO F.R.C.P. 13(g)

KUHARCHIK CONSTRUCTION, INC.

V.

COMMONWEALTH OF PENNSYLVANIA DEPT. OF TRANSPORTATION; TOWNSHIP OF HANOVER; MT. HOPE ROCK PRODUCTS, INC.; TILCON NEW YORK, INC.; INTERCOUNTY PAVING ASSOCIATES, LLC, ROCK HILL TRUCKING CO., INC.; MARK NEHODA INDIVIDUALLY AND T/A M.D.N. TRUCKING COMPANY; EAGLE TRAFFIC CONTROL, INC.; AMITY FENCE COMPANY; INTERSTATE ROAD MARKING CORP. & ITS SUCCESSOR IN INTEREST, INTERSTATE ROAD MANAGEMENT CORPORATION; MIDLANTIC ENGINEERING, INC.; MARBELL, INC.; TOTAL LANDSCAPING, INC.; JAMES D. SMITH INDIVIDUALLY AND T/A J.D. SMITH TREE SERVICE; UNITED RENTALS HIGHWAY TECHNOLOGIES, INC.; AND ABC CORPORATION

37. By reason of the averments set forth in the Complaint of Plaintiff, VICKI E. OLSEN, which are incorporated herein by reference, without admission or adoption, as if the same were set forth fully here at length, Defendant, KUHARCHIK CONSTRUCTION, INC., avers that Defendants, COMMONWEALTH OF PENNSYLVANIA DEPT. OF TRANSPORTATION; TOWNSHIP OF HANOVER; MT. HOPE ROCK PRODUCTS, INC.; TILCON NEW YORK, INC.; INTERCOUNTY PAVING ASSOCIATES, LLC, ROCK HILL TRUCKING CO., INC.; MARK NEHODA INDIVIDUALLY AND T/A M.D.N. TRUCKING COMPANY; EAGLE TRAFFIC CONTROL, INC.; AMITY FENCE COMPANY; INTERSTATE ROAD

MARKING CORP. & ITS SUCCESSOR IN INTEREST, INTERSTATE ROAD MANAGEMENT CORPORATION; MIDLANTIC ENGINEERING, INC.; MARBELL, INC.; TOTAL LANDSCAPING, INC.; JAMES D. SMITH INDIVIDUALLY AND T/A J.D. SMITH TREE SERVICE; UNITED RENTALS HIGHWAY TECHNOLOGIES, INC.; AND ABC CORPORATION, or any of them, are liable to Defendant, KUHARCHIK CONSTRUCTION, INC., for all or part of the claim or claims asserted against Defendant, KUHARCHIK CONSTRUCTION, INC., in the cause of action asserted by Plaintiff, VICKI E. OLSEN.

38. Defendant, KUHARCHIK CONSTRUCTION, INC., denies that it is liable in any way to Plaintiff, VICKI E. OLSEN, however, in the event that Defendant, KUHARCHIK CONSTRUCTION, INC., should be held liable to Plaintiff, VICKI E. OLSEN, in any amount, then, in that event, Defendants, COMMONWEALTH OF PENNSYLVANIA DEPT. OF TRANSPORTATION; TOWNSHIP OF HANOVER; MT. HOPE ROCK PRODUCTS, INC.; TILCON NEW YORK, INC.; INTERCOUNTY PAVING ASSOCIATES, LLC, ROCK HILL TRUCKING CO., INC.; MARK NEHODA INDIVIDUALLY AND T/A M.D.N. TRUCKING COMPANY; EAGLE TRAFFIC CONTROL, INC.; AMITY FENCE COMPANY; INTERSTATE ROAD MARKING CORP. & ITS SUCCESSOR IN INTEREST, INTERSTATE ROAD MANAGEMENT CORPORATION; MIDLANTIC ENGINEERING, INC.; MARBELL, INC.; TOTAL LANDSCAPING, INC.; JAMES D. SMITH INDIVIDUALLY AND T/A J.D. SMITH TREE SERVICE; UNITED RENTALS HIGHWAY TECHNOLOGIES, INC.; AND ABC CORPORATION, or any of them, is/are liable over to Defendant, KUHARCHIK CONSTRUCTION, INC., for all or part of the claim or claims asserted against Defendant, KUHARCHIK CONSTRUCTION, INC., by Plaintiff, VICKI E. OLSEN.

Respectfully Submitted,

POLACHEK & ASSOCIATES, P.C.

RICHARD A. POLACHEK, ESQUIRE
Counsel for Defendant,
KUHARCHIK CONSTRUCTION, INC.

CERTIFICATE OF SERVICE

I, Richard A. Polachek, Esquire, hereby certify that on _____, I did serve upon counsel and parties of record as identified in the Service List the foregoing ANSWER, AFFIRMATIVE DEFENSES AND CROSSCLAIM OF DEFENDANT, KUHARCHIK CONSTRUCTION, INC., via First Class U.S. Mail, postage prepaid, addressed as set forth in the attached Service List.

POLACHEK & ASSOCIATES, P.C.

**RICHARD A. POLACHEK, ESQUIRE
Counsel for Defendant,
KUHARCHIK CONSTRUCTION, INC.**

SERVICE LIST

Vance E. Meixsell, Esquire
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Township of Hanover
2202 Grove Road
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InterCounty Paving Associates, LLC
859 Willow Grove Street
Hackettstown, NJ 07840

Eagle Traffic Control
16 Marian Circle
Chalfont, PA 18914

Mt. Hope Rock Products, Inc.
625 Mt. Hope Road
Wharton, NJ 07885

Tilcon New York, Inc.
162 Old Mill Road
West Nyack, NY 10994

Total Landscaping, Inc.
RD #1, Golfhill Road
P.O. Box 985
Honesdale, PA 18431

James D. Smith/J.D. Smith Tree Service
1928 Ben Salem Road
Andreas, PA 18211

United Rental Highway Technologies, Inc.
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Marbell, Inc.
220 Broad Street
Carlstadt, NJ 07072

Rock Hill Trucking Co., Inc.
229 School Street
Catasauqua, PA 18032

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2007 Sullivan Trail
Easton, PA 18042

Interstate Road Marking Corp.
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